

1 wrong with the paths. What he may have learned, what he's -
2 - what he's implying that he learned was that Time Warner
3 had been objecting to those paths. And then he puts two and
4 two together and figures out that there's a problem.

5 JUDGE SIPPEL: I can't help but think that in
6 light of -- in light of all we've said about how Mr. Nourain
7 stacks up as a Witness, that somebody wasn't giving him
8 either instructions or information or some kind of direction
9 at a specific point in time.

10 MR. BEGLEITER: Clearly that -- clearly he --
11 clearly he was getting some instruction and information
12 because he was very candid that within -- within a very
13 close period of time, he meets with three supervisors: Tony
14 Ontiveros, Edward Milstein and Peter Price. That's clear.

15 JUDGE SIPPEL: Right.

16 MR. BEGLEITER: So everybody -- it's all surfaced
17 very, very quickly. And they know. So it's not as if -- if
18 we're going back in time, that it was just simply placed on
19 his -- you know, in his lap and he was the only one who had
20 responsibility.

21 JUDGE SIPPEL: He just finished telling us that he
22 -- the first inkling he had that there's a problem is a fax,
23 a mysterious fax. Information comes out of his machine. He
24 looks at it and he says, wow, and I've got to go see
25 somebody. Nobody calls him up and says, hey, we've got a

1 problem here or we might have something; I want you to take
2 a look at this. And then all of a sudden, these three
3 people for the first time are told then by him who comes
4 back --

5 MR. BEGLEITER: That's not clear either, Your
6 Honor. That's not clear. They may have been --

7 JUDGE SIPPEL: Well, of course it's not clear.
8 But you're -- it's not my -- this is why I hoping it's going
9 to cleared up.

10 MR. BEGLEITER: This is my testimony. I'm afraid
11 that we may never come to the -- because I've been trying to
12 do this. And again, this is a -- this is a candid hearing.
13 And the -- and we -- we will be candid -- candid testimony
14 of these people is how it's coming out. I mean, easily,
15 some other explanation, you know, could have been given.
16 But this is the one he remembers. He's being candid to the
17 Court. It's a difficult explanation to accept. We all know
18 that. But that's his -- that's his best recollection. We
19 respect this hearing. And we're going to give you -- we're
20 going to give you their best memories.

21 But everything beyond what he's saying now becomes
22 -- becomes conjecture. And I think you have to ask yourself
23 what is there about his testimony that's negative to
24 Liberty's case. And the answer is I think nothing. If you
25 believe him that he found out that last week in April,

1 that's our position. And we think that everything that we -
2 - everything that we're asking Your Honor to do by approving
3 the joint decision is supported once Your Honor determines
4 that he found out the last week in April.

5 Is there reason to believe that he knew in earlier
6 April or in March or in February? There is no reason to
7 believe that. And the fact that he may have gotten it by a
8 fax that he can't remember in the last week in April doesn't
9 change the fact that he didn't know about it in February,
10 March and April as Mr. Beckner is trying to prove.

11 JUDGE SIPPEL: That's right. But suppose somebody
12 else knew about it.

13 MR. BEGLEITER: Well, then -- well, we're here to
14 prove that none of the people who are relevant did. I
15 mean --

16 MR. BECKNER: Your Honor --

17 JUDGE SIPPEL: This is circular. This argument is
18 very circular.

19 MR. BECKNER: Since Mr. Begleiter's making
20 argument, I've got to respond a little bit. I mean, the
21 answer to his question is is how is -- how is his testimony
22 bad for his client, is that his client here and the party
23 here is not Behrooz Nourain. It's Liberty Cable Company.
24 And this Witness has just testified that he received
25 information from someone else at Liberty from his

1 headquarters to the effect that they were operating without
2 licenses.

3 So somebody else knew before he knew. That's what
4 he's testified to. We don't know who it is, but that's what
5 he said. And that's consistent with his deposition
6 testimony which -- part of which Mr. Begleiter read to you
7 and the rest of which is -- goes on on pages 77 and 78 of
8 the May 29 transcript which is already received in evidence.
9 I'm not going to read it to you unless you want me to.

10 JUDGE SIPPEL: No. Well, let's bring the Witness
11 back in and you can just pursue this.

12 MR. BECKNER: Okay.

13 JUDGE SIPPEL: All right?

14 MR. BECKNER: All right.

15 JUDGE SIPPEL: Let's go off the record until the
16 Witness returns.

17 (Whereupon, a brief recess was taken.)

18 JUDGE SIPPEL: The Witness is back in the
19 courtroom and he's taken the stand again. And I just wanted
20 to explain very broadly to you, Mr. Nourain, that where
21 there has been a discussion here amongst counsel and myself
22 with respect to focusing particularly on whether or not we
23 are missing some -- some information here, specifically this
24 fax information that came to you and in what context it came
25 to you. And there were discussions about how you might have

1 -- you know, at what point in time you might have gotten
2 this information.

3 So we really haven't -- we haven't moved the ball
4 in the final analysis. But I just wanted to let you know
5 what was going on in here in your absence. And the reason
6 we had to do it that way is so that you didn't inadvertently
7 get some ideas from somebody as to how you -- you should
8 testify. In other words, we want your testimony the way you
9 see it; the way you recall it. Okay?

10 THE WITNESS: Yes, sir.

11 JUDGE SIPPEL: All right. Well, you're still
12 under oath and Mr. Beckner still has some questions.

13 BY MR. BECKNER:

14 Q Mr. Nourain, before you were excused and we had
15 our colloquy out of your presence, we were talking about
16 this -- and you were talking with the Presiding Judge in
17 particular about this fax that you say came into your office
18 from headquarters. And what I'd like to try to do if I can
19 is to ask if you can remember the day when that fax came in,
20 now either the day of the week or actual the number day.
21 You know, was it April twenty-something or --

22 JUDGE SIPPEL: Would it be helpful to tell the
23 Witness what day of the week April -- April the 28th was?

24 MR. BEGLEITER: Friday, Your Honor.

25 JUDGE SIPPEL: It was a Friday.

1 MR. SPITZER: That's correct, Your Honor.

2 JUDGE SIPPEL: So April 28th when you got the
3 memorandum from Mr. Lehmkuhl, that was a Friday. So maybe
4 you can think back from there.

5 THE WITNESS: I'll say maybe no -- no more than
6 two or three days before that.

7 BY MR. BECKNER:

8 Q Okay. Now, in your deposition, I just -- I just --
9 -- again, I'm asking if this -- your recollection may be
10 different. At your deposition, you were asked did there
11 come a time when you learned that Liberty had been operating
12 certain facilities without an FCC authorization. This is at
13 page 76, the beginning of line 18 of the May 29 deposition.
14 And you answered yes. And then there was another question,
15 "At what point did you learn this?" And you answered,
16 "About April 20, the end of April '95." Does that at all
17 help you remember what date it was that you got this fax?
18 Do you think it was April 20 or do you think it was closer
19 to April 28th?

20 A No. During all my discussion, as you see, I
21 always elaborate. I just some point said it happened April
22 twenty -- end of April. That's how I said it.

23 Q Sure, I understand.

24 A So it's -- to pin it down on April 20 -- I say
25 then maybe April 24 or 25 or two days, three days between

1 April 28 to me would have all been consistent.

2 Q Okay. So you're just not able to be any more
3 precise --

4 A The only thing I know is that -- I'm absolutely
5 sure and I always said that, it was the latter part of
6 April. It was that last week that Your Honor said that
7 April 28 was Friday. It has happened that last week.

8 Q Okay.

9 A To the fact that I had -- I knew it and I just
10 responded on a very expedited fashion on it. And that --
11 that I remember.

12 Q Okay.

13 A Whether there is a couple of days here and there,
14 it was during that week. That I'm absolutely sure.

15 Q All right. Now, let me ask you about this fax
16 that you say you received. Did the -- did the paper itself
17 tell you that you had paths to buildings that weren't
18 licensed or did you use the information on the paper to
19 figure out for yourself that that was what the situation
20 was?

21 A Yes, my recollection is it wasn't really clear-
22 cut. That's why I say, I have to investigate that for some
23 time to find out based on my technical information and then
24 I talked with Mike Lehmkuhl of Pepper & Corazzini. And
25 after all of that, we figured out about the emission

1 designator and about the petition to deny by Time Warner at
2 the beginning of the year. All that came in combination of
3 all of those. That's what I remember now.

4 Q Okay. So the thing that you got in the fax
5 machine was not simply a list of addresses that were
6 identified as being served without licenses. Is that right?

7 A I -- I don't think it was, no. No. I would say
8 no because if I knew it, if it was the addresses, then I
9 wouldn't investigate. I mean, I'm just going with my
10 logical -- see, I'm an engineer. I have to have a logic
11 with what I do. And that was the case. It wasn't just --
12 if there was all of them there and clear-cut says it was
13 that because of that because of that, I knew it. But I
14 didn't know about the petition to deny for all applications
15 was on January until I talked to Mr. Lehmkuhl. I didn't
16 know about all the emission designators until I made some
17 investigation on my technical information.

18 So I have done few things rather than have
19 something like this list on this -- you know, the letter of
20 the 28th as a result. If I had that, then maybe a lot of
21 things would be clear. But these are all as a result of my
22 discussion with Pepper & Corazzini representative and my
23 investigation. So to answer your question, I don't think it
24 was clear-cut. All I knew was that Time Warner had
25 objections and -- to some unauthorized paths. And there was

1 some information that led me to just go there and do some
2 investigation or talk to Pepper & Corazzini.

3 Q Okay. Well, do you think perhaps the fax that you
4 received was a list of applications that -- that Time Warner
5 had -- in other words, did it tell you here's a list of
6 applications that Time Warner has petitioned to deny? Do
7 you think that's what it was that you got?

8 A If I get something like that, I will respond in
9 the same fashion, yes.

10 Q But -- but the question was is this fax that you
11 say came from headquarters -- I'm -- we're trying to get a -
12 - we don't have the document. We're trying to get an idea
13 of what it was.

14 A All I'm saying is that if anything comes that has
15 any resemblance -- anything comes in front of me that says
16 that Time Warner is denying some application, obviously that
17 triggers. And if -- hypothetically speaking, if that was
18 the case, that could have started the whole thing.

19 Q But you don't know whether it was or was not the
20 case?

21 A Right this minute, I don't remember.

22 Q Okay. I want to -- I want to read to you a
23 section of your deposition testimony about this. And I'm
24 not saying that it's inconsistent with what you're saying
25 today. But I want to see if it refreshes your recollection

1 or perhaps you can explain -- explain it to us after you've
2 heard it. Right after -- this is on page 77 of the May 29
3 transcript.

4 Right after you answer the question by saying,
5 "About April 20, end of April 1995", when you learned that
6 Liberty had been operating facilities without authorization,
7 the next question is, "How did you come to learn about this
8 knowledge?" And you answered, "If I remember, some of the
9 information came from Time Warner of some of these buildings
10 without authorization." And then you were asked, "Was it
11 somebody at Liberty that told you that they had heard it
12 from Time Warner or did you have direct contact with Time
13 Warner?" And you answered, "No, I just got -- from what I
14 recall, I got something was sent; a list of the buildings
15 and they say they were. That's why I found out."

16 And there's another question, "I guess what I'm
17 asking more specifically is, and I will try to be clear, did
18 Time Warner send this information directly to you?" Answer:
19 "No." Question: "Did somebody at Liberty convey to you
20 that Time Warner had brought up this information?" Answer:
21 "I don't exactly remember who and how, but a document came
22 up to my office internally." Okay. I'm going to stop
23 reading there.

24 Now, again, this is -- this is your deposition
25 testimony of May 29 of last year. And what I want to ask

1 you is does that refresh your memory at all as you sit here
2 today about where this fax information came from and what it
3 was that was in the fax?

4 A No difference.

5 Q Okay.

6 MR. BEGLEITER: Your Honor, if I may.

7 JUDGE SIPPEL: Yes, sir.

8 MR. BEGLEITER: I would ask that Mr. -- Mr.
9 Nourain be excused for a moment. And then I -- I'll say
10 something to you, Mr. Beckner.

11 JUDGE SIPPEL: All right.

12 MR. BEGLEITER: Okay.

13 JUDGE SIPPEL: Again, off the record.

14 (Off the record.)

15 JUDGE SIPPEL: Back on the record.

16 MR. BEGLEITER: We're using the word, "fax",
17 loosely. He says in his deposition he didn't remember who
18 or how brought it to him. Now, he may be referring to a fax
19 as simply a faxed document, but not necessarily faxed to
20 him.

21 JUDGE SIPPEL: Well, I'll have to go back and look
22 at today's transcript. But I thought he said that it came
23 to him out of this -- and he was trying to figure out which
24 fax machine it came out of or something. I mean, in a
25 very --

1 MR. BEGLEITER: I think Your Honor -- I think Your
2 Honor asked him that question and used the term, "faxed to
3 you."

4 JUDGE SIPPEL: Well, maybe we better bring him in
5 here and clear that up --

6 MR. BEGLEITER: Okay.

7 JUDGE SIPPEL: -- because I have -- I'm under a
8 distinct impression that his testimony was that he received
9 it by an internal fax. Now --

10 MR. BEGLEITER: My impression is different. Well,
11 maybe -- well, maybe I'm wrong Maybe I'm mistaken.

12 MR. WEBER: I think I also do recall him saying it
13 came out of his machine, as well. I think his using the
14 word, "machine."

15 JUDGE SIPPEL: Well, that's how I heard it, too.
16 All right. We'll just leave the record the way it is.

17 MR. BEGLEITER: Okay. All right.

18 JUDGE SIPPEL: Was that it?

19 MR. BEGLEITER: Yes, that was it, Your Honor.

20 JUDGE SIPPEL: Okay. Let's go off the record
21 until he comes back in.

22 (Off the record.)

23 JUDGE SIPPEL: Thanks, Mr. Nourain. Again, it was
24 -- it was just a question of getting -- trying to get some
25 common understanding among counsel and myself. You may

1 proceed then, Mr. Beckner.

2 MR. BECKNER: Thank you, Your Honor.

3 BY MR. BECKNER:

4 Q Mr. Nourain, the -- this document that you say you
5 received, I've been using the term, "fax." Do you -- was it
6 -- do you remember whether it was a fax that came to you
7 that started all of this?

8 A I think it was something came. I did not get any
9 direct information from Time Warner I never got. So that's
10 why at the time that I had that deposition and I recall that
11 it was some kind of a document was -- was faxed to me.

12 Q Okay. And I'm going to leave the deposition for a
13 minute and just ask you about your testimony today.

14 A Yes.

15 Q Because I don't want to mischaracterize it. Today
16 -- is it your testimony today that -- that you remember
17 getting this -- this document that started your whole
18 review, that you got it from your fax machine?

19 A Some document was, yes, faxed.

20 Q Okay. All right. That's fine. Because I've been
21 using the term, "fax", and I want to make sure that I'm not
22 making something up that's not what you testified. Now, the
23 document that you got, do you remember whether it was one
24 page or several pages?

25 A I don't recall.

1 Q Okay. And after you got the document, take it
2 that what you did is you started checking some of your own
3 records, is that right?

4 A Yes. I looked at a few things, yes.

5 Q Okay.

6 A Some technical documents.

7 Q And -- and -- and then after you checked the
8 records that you already had, did you come to some kind of
9 conclusion about whether or not you were -- whether or not
10 Liberty in fact was operating some facilities without a
11 license?

12 A No conclusion came until I discussed it with --
13 all my conclusions came after I discussed with Mike
14 Lehmkuhl.

15 Q Okay.

16 A That was -- that was the thing that I needed an
17 answer from him. He was the one that he had to answer me
18 because anything with regard to an unauthorized -- something
19 with an unauthorized building comes to me, the first thing I
20 will do is go to him. I just want to make sure that I know
21 what I'm talking to him about.

22 Q Okay.

23 A It wasn't that I was getting any conclusion with
24 my investigation or my looking at things. So I just did a
25 little homework to find out what -- what is -- internally I

1 have, but the whole conclusion came after I discussed with
2 him on the phone.

3 Q Okay. Before you called Mr. Lehmkuhl, well, I
4 take it that it appeared to you at least possible that some
5 paths to buildings were active and unlicensed and that's why
6 you called him, to check that. Is that --

7 A Could you repeat that again?

8 Q Before you talked to Mr. Lehmkuhl, I think I
9 understand you to say that you had decided that it was
10 possible that some paths were being run without a license.
11 And the reason you called Mr. Lehmkuhl was to check that.

12 A Absolutely not. All I said is that somebody sent
13 something that it says unauthorized. I didn't get the
14 conclusion that I assumed it was. I said that I find out
15 what those documents are. And I called to Mike Lehmkuhl
16 because I was going to talk with him to make sure he had put
17 an STA on it. And I didn't take that document as correct so
18 to speak --

19 Q Okay.

20 A -- if that's what you're asking.

21 Q Okay. No, that's --

22 A I didn't conclude from that. My conclusion was
23 after my discussion with Mike Lehmkuhl. I had -- I took
24 that document as benefit of a doubt, there may be a mistake
25 in there at that time --

1 Q Sure.

2 A -- until I talked to the lawyer that I paid him to
3 get all these authorizations.

4 Q Okay. Well, so, let's go back to -- the document,
5 when you say, "the document", in your answer, is that the
6 thing that came in over the fax machine?

7 A Yes. Yes, by document it means that.

8 Q Okay. I just want to --

9 A I could say for simplicity the piece of paper that
10 I got.

11 Q Sure. No, I just want to make sure we're talking
12 about the same thing.

13 A Yes, we're talking about the same type of
14 information that we've been talking about.

15 Q So -- so this document that you got over the fax
16 machine, did it actually say this path is -- is not licensed
17 or that path is not licensed?

18 A No. I -- I don't recall that. I just said that
19 it says that there's -- Time Warner had some petition on
20 some paths, that they think it's been turned on
21 unauthorized. Some -- some -- to some kind of a legal term,
22 something like that.

23 Q Okay.

24 A It's nothing less; nothing more. And no -- you
25 know, everything was investigated afterwards.

1 Q Now, did you call Mike Lehmkuhl before or after
2 you talked to Tony Ontiveros about this issue?

3 A I -- I can't answer you. I don't recall.

4 Q Okay. Do you remember whether or not you spoke
5 with Mike Lehmkuhl before or after you and Mr. Ontiveros
6 went and met with Mr. Price and Mr. Edward Milstein?

7 A Could you repeat the question again?

8 Q Okay. Do you remember whether or not -- you
9 testified about a meeting that you had on this subject with
10 Mr. Edward Milstein and Mr. Peter Price.

11 A Yes.

12 Q Okay. Did that meeting happen after you had
13 called Mike Lehmkuhl and tried to find out what was going
14 on?

15 A Yes.

16 Q Okay. So at the meeting, it was -- it was -- it
17 was -- at that point, you were satisfied -- at the time of
18 the meeting, you were satisfied first that there were in
19 fact some microwave paths being operated without licenses,
20 and second, you knew or had an explanation as to how that
21 had happened which you told Mr. Price and Mr. Edward
22 Milstein.

23 A By licenses, you better use authorizations because
24 I knew that we didn't have a license. But I knew that after
25 talking with Mike Lehmkuhl that there wasn't some STA being

1 filed and he didn't authorize some of the paths. At the
2 meeting, yes.

3 Q All right. At the meeting, did you discuss with
4 Mr. Price and Mr. Edward Milstein what to do about this
5 problem, how to solve it now that the discovery had been
6 made that you were operating without authorizations?

7 A As I mentioned, the meeting wasn't as much about
8 authorizations or discovery of it. The meeting was that I
9 talked to them about that Pepper & Corazzini did not apply
10 for the STA and obtain the authority for some of these paths
11 because of the emission designator. And I explained to them
12 about what the emission designators are and that I have you
13 know, the technical part of it sometime in September of '94.
14 And as such, because of the emission designator foul up, we
15 had to file it again. It fell into January.

16 And why Pepper & Corazzini didn't have an STA on
17 those paths even prior to the end of 1994, as such, I found
18 out that after my conversation with Mike Lehmkuhl, that
19 there was a petition against all the paths. So as such, he
20 didn't do any STAs, apply or get authorization during the
21 1995. As such, all of these things combined created that.
22 And I told them that I talked with Mike Lehmkuhl and we are
23 applying for STAs. That was -- that was the whole
24 discussion. A very brief meeting. No detailed discussion
25 on anything else.

1 Q Okay. So I take it then from what you just said
2 about the information you gave Mr. Price and Edward Milstein
3 at the meeting, that you had already told Mike Lehmkuhl on
4 the telephone to apply for STAs for these paths.

5 A Yes, sir.

6 Q Okay. And was that in the same telephone
7 conversation where you and Mike Lehmkuhl discussed the fact
8 that these paths were currently being operated without any
9 authorization at all?

10 MR. BEGLEITER: Objection, Your Honor.

11 JUDGE SIPPEL: What basis?

12 MR. BEGLEITER: I think he's mischaracterizing the
13 Witness' testimony.

14 JUDGE SIPPEL: That's -- I'll sustain the
15 objection and I'll permit you to rephrase the question to
16 see if you can get the Witness to agree with you.

17 MR. BECKNER: Sure.

18 BY MR. BECKNER:

19 Q The telephone conversation after you -- I think
20 you used the term, "did your homework", you had a telephone
21 conversation with Mike Lehmkuhl, correct?

22 A Yes, I had a telephone conversation with him.

23 Q Okay. And in that conversation, did -- did you
24 determine that -- or did you and he determine together that,
25 in fact, some of these addresses were being served by paths

1 for which you had no authorization?

2 A We never discussed about authorization or
3 unauthorization. The only discussion was that why hasn't it
4 been any STAs on these paths and what is -- why did Time
5 Warner -- what is Time Warner's petition to deny.

6 Q So you -- did you tell him that some of these
7 paths were already being activated?

8 A I don't recall I told him that.

9 Q Did you yourself know that some of the paths were
10 already active and in use?

11 A I think from that memo that came, that we were
12 turning on. And I -- after my discussion with Mike
13 Lehmkuhl, that he did not put any STAs on it. And I asked
14 him why not. He mentioned because the petition to deny came
15 from Time Warner. That was a logical assumption that that
16 might have happened. That triggered the reason why the
17 paths are unauthorized.

18 Q In this series of events that you've been
19 testifying about, Mr. Nourain, when did you know that some
20 of the paths were -- that you were operating in fact were
21 not authorized, there was no license and there was no STA?

22 A After I discussed with him and told me about the
23 petition and he told me that they -- there is no STA he
24 applied because of that petition.

25 Q Okay. So -- so you -- did you have a list of

1 paths that you had made up yourself?

2 A No. Based on -- as I repeat again, based on that
3 paper -- document that I received, I went over part of the -
4 - part of the technical and the rest I discussed that with
5 Mike Lehmkuhl about it -- about him telling me that -- what
6 is happening during these last couple of months. And then
7 he talked about some of those paths. And he mentioned about
8 the emission designator path. He mentioned about the Time
9 Warner petition and why he didn't have STAs because of
10 those.

11 Q And was it in that same phone conversation that
12 you asked him to apply for STAs for all these paths or was
13 it in a later conversation?

14 A No, no. That's correct. The same conversation, I
15 said let's apply for it and provide me with an update of all
16 other paths because at that time, we were trying to do
17 technical -- providing some technical information and we
18 were going to get some of the other buildings filed although
19 they were not activated. So I just wanted him to clear the
20 whole issue and give me the update of all the paths, not the
21 ones that necessarily had a problem at the time with it.
22 But also, the future paths. And that's what that 28th
23 letter, it includes all the paths. Some of them there was a
24 problem. The other was what I called the future paths at
25 the time.

1 Q So you're telling us that at no time in the
2 conversation that you had with Mike Lehmkuhl did you mention
3 the fact that any of the paths that you were asking him
4 about were already turned on?

5 A I don't recall I talked to him about that, no.

6 Q At the time when you had the call with him,
7 however, you were aware that some of these paths were
8 operating, were you not?

9 A After I found out about the petition, after my
10 conversation with him, yes. Then I knew there were. And he
11 told me he didn't have an STA for some of them. And I knew
12 we activated some paths without an STA grant because there
13 was no STA applied to it to be granted. It was very
14 obvious.

15 Q So when you -- when you first got the document
16 that came in on the fax machine, just to go back for a
17 moment, that document, did it cause you -- it caused you to
18 wonder whether or not you had in fact licenses for a number
19 of paths? Is that -- would that first -- the first document
20 that you came -- that you got on the fax machine -- I'm just
21 trying to get a handle on the progress of your thinking
22 during this time. You got a document on the fax machine
23 that came from headquarters. And apparently it raised the
24 possibility in your mind that some applications you thought
25 had been granted had not been granted. Is that right?

1 JUDGE SIPPEL: I'm -- the Witness has already been
2 asked and answered at least on one occasion, perhaps several
3 occasions, on this subject. So I think his position with
4 respect to what his frame of mind was at that time is --
5 is -- he's told us what it is.

6 MR. BECKNER: Okay.

7 JUDGE SIPPEL: Is there another subject area that
8 you want to move on to?

9 MR. BECKNER: Yes. No, I mean, I'll be glad to
10 leave this. I just --

11 JUDGE SIPPEL: All right. Well --

12 MR. BECKNER: I'm not clear, but if you are,
13 that's fine.

14 JUDGE SIPPEL: Well, I'm not so sure -- I didn't
15 say I was clear. I said he's already answered the question.
16 That's all.

17 MR. BECKNER: Yes.

18 JUDGE SIPPEL: The question I have is before you -
19 - well, let me ask the question this way. Was Mr. Ontiveros
20 your supervisor --

21 THE WITNESS: Yes, sir.

22 JUDGE SIPPEL: -- in April of '95?

23 THE WITNESS: Yes.

24 JUDGE SIPPEL: All right. Before -- between the
25 time that you received the internal fax and you placed your

1 call to Mr. Lehmkuhl, did you speak with Mr. Ontiveros about
2 this situation?

3 THE WITNESS: Well, I had talked with him -- I
4 don't recall right now if it was between the two or right
5 after I discussed it with Mike Lehmkuhl in my phone
6 conversation. But everything was happening on that date.

7 JUDGE SIPPEL: Well, all right. Because you gave
8 Mr. Lehmkuhl some very specific instructions, didn't you?
9 Or at least you testified to, that he was to apply or to
10 undertake to get STAs where necessary.

11 THE WITNESS: That's correct, sir.

12 JUDGE SIPPEL: And you wouldn't check that out
13 with Mr. Ontiveros before you did that, before you gave Mr.
14 Lehmkuhl those instructions?

15 THE WITNESS: No, sir.

16 JUDGE SIPPEL: Is Mr. Lehmkuhl -- where is he
17 physically located in terms of your office?

18 THE WITNESS: He's in Washington, D.C.

19 JUDGE SIPPEL: I'm sorry, Mr. Ontiveros.

20 THE WITNESS: Mr. Ontiveros, he locates in our
21 office about next door.

22 JUDGE SIPPEL: Right next door to you.

23 THE WITNESS: Yes.

24 JUDGE SIPPEL: Now, the memo -- Mr. Lehmkuhl
25 addressed the memo to Mr. -- to you and to Mr. Price.

1 THE WITNESS: That's correct, sir.

2 JUDGE SIPPEL: Why is that?

3 THE WITNESS: I guess that's what all the
4 correspondence with Pepper & Corazzini during the whole
5 period of time I was with the company would -- at the time
6 would go to Peter Price and Bruce McKinnon at the time. And
7 then after that, all was between Price and myself.

8 JUDGE SIPPEL: But I'm asking about this specific
9 one. You didn't -- did you perhaps by chance say to Mr. --
10 that you -- did you talk to Mr. Price before you called Mr.
11 Lehmkuhl and said that I've talked to Peter Price and he --
12 you know, something to this effect that -- no.

13 THE WITNESS: No, because --

14 JUDGE SIPPEL: But if he's going to send -- if Mr.
15 Lehmkuhl -- well, is this a document -- this April 28th
16 document, again which is TW/CV 34, is this something that's
17 a routine document or a non-routine document?

18 THE WITNESS: This is a very non-routine document.

19 JUDGE SIPPEL: Okay. Now, a document -- do you
20 receive many of these from Mr. Lehmkuhl?

21 THE WITNESS: Not like this, no.

22 JUDGE SIPPEL: What's the last one that you
23 remember receiving before this?

24 THE WITNESS: Receiving like this? All I received
25 from Mr. Lehmkuhl was the copies of the files and that would